

§ 305.5(b)(2). The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of the prehearing conference.* The prehearing conference shall be held in the county where the release occurred, in the city in which the EPA Regional Office is located (in the Region where the release or threat of release occurred), or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte*, may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Discovery shall include any of the methods described in rule 26(a) of the Federal Rules of Civil Procedure.

(2) The parties may conduct any mutually agreed upon discovery without participation or determination of the Presiding Officer except that such voluntary discovery may be subject to such time limitations as the Presiding Officer deems appropriate.

(3) Except as provided by paragraphs (b) and (f)(2) of this section, further discovery, under this section, shall be permitted only pursuant to order of the Presiding Officer. Any party to the proceeding desiring an order of discovery shall make a motion therefore. Such motion shall set forth:

(i) The circumstances warranting the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The method of discovery sought, including, where relevant, the proposed time and place where the discovery will be conducted.

(4) The Presiding Officer shall issue an order for discovery only upon a showing of good cause and upon a determination:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

If the Presiding Officer determines that the motion should be granted, he shall issue an order for such discovery together with the conditions and terms thereof.

(5) The Presiding Officer shall order depositions upon oral questions only upon a finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(6) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to:

(i) The inference that the information to be discovered would be adverse to the party from whom the information was sought; or

(ii) The issuance of a default order under § 305.24(a).

(g) *Interpreters.* The Presiding Officer shall make the necessary arrangements for the services of an interpreter upon the motion of a party or *sua sponte*. The cost of the interpreter shall normally be borne by the party requesting the service, but the Presiding Officer may apportion the cost among the parties as justice demands.

§ 305.27 Accelerated order, order to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an accelerated order in favor of the Requestor or the Claims Official as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and the party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the Claims Official, may at any time dismiss a Request for a Hearing without further hearing or upon such

limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the Requestor.

(b) *Effect.* (1) If an accelerated order or an order to dismiss is issued as to all the issues in the proceeding, the order constitutes the final order of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated order or an order to dismiss is rendered on less than all issues in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 305.30 Scheduling the hearing.

(a) *Filing of answer.* When an answer is filed, the Hearing Clerk shall forward such answer to the Presiding Officer.

(b) *Notice of hearing.* The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than 20 days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method of determining the location of a prehearing conference under § 305.26(d).

§ 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. appendix) is not admissible. In the

presentation, admission, disposition, and use of evidence, the Presiding Officer shall follow the provisions regarding confidential business information of 40 CFR part 2, subpart B for CERCLA. The commercial or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental final order to address questions of law or fact which arise out of that portion of the evidence which is confidential or which includes trade secrets. For the purpose of recording the hearing, the court reporter shall be considered “a person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act” pursuant to 40 CFR 2.301(h)(2); unless the affected business, as defined in 40 CFR 2.201(d), agrees to some other procedures approved by the Presiding Officer.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the Presiding Officer. A party shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinions prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits and other statements where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits and other